

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JAMES EARL EVANS, SR.,

Plaintiff,

-against-

CASE MANAGER LYNDSEY SANTA;  
CASE WORKER BROOK LIVINGSTON,

Defendants.

23-CV-2511 (LTS)

ORDER OF DISMISSAL

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is currently incarcerated at Mohawk Correctional Facility, brings this action *pro se*. For the following reasons, the complaint is dismissed without prejudice.

Plaintiff has previously submitted to this court a substantially similar complaint, in which he sues the same two defendants and asserts claims arising on the same date (February 12, 2022). That case is pending in this Court under docket number 23-CV-0626 (LTS). Because this complaint raises the same claims, no useful purpose would be served by the filing and litigation of this duplicate lawsuit.<sup>1</sup> Therefore, this complaint is dismissed without prejudice to Plaintiff's pending case under docket number 23-CV-0626 (LTS).

In light of the Court's belief that Plaintiff may have submitted this duplicate complaint in error, the Court directs the Clerk of Court not to charge Plaintiff the \$350.00 filing fee for this

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<sup>1</sup> Although Plaintiff states that his claims arose on February 12, 2022, he also states that he has had "all types of civil rights violations at the hands of these #2 workers." (ECF 1 at 5.) If Plaintiff is attempting to also raise some new claim not asserted in his earlier suit – though it is not clear from this complaint that he is – he can seek leave in his pending action to include such additional claims.

action, and the Warden or Superintendent having custody of Plaintiff shall not deduct or encumber funds from Plaintiff's prison trust account for this lawsuit.<sup>2</sup>

### CONCLUSION

The Court dismisses Plaintiff's complaint without prejudice as duplicative of *Evans v. Santa*, No. 23-CV-0626 (S.D.N.Y.). Plaintiff shall not be charged the \$350.00 filing fee for this action.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Court directs the Clerk of Court to enter judgment in this matter.

SO ORDERED.

Dated: April 26, 2023  
New York, New York

/s/ Laura Taylor Swain

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LAURA TAYLOR SWAIN  
Chief United States District Judge

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<sup>2</sup> Because Plaintiff did not initially submit a prisoner authorization, the Court has not yet granted Plaintiff's request to proceed *in forma pauperis* in this action.